

PORSF

11.3.31.1.1

2000-191

---

**LEASE of IMPROVED SPACE**

---

**BETWEEN**

**THE PORT OF PORTLAND**

**AND**

**BENSON INDUSTRIES, INC.**

Dated as of: **December 6, 2000**

---

**USEPA SF**



**1293914**

**POPT1N100374**

## TABLE OF CONTENTS

1.	AGREEMENT TO LEASE PROPERTY.....	1
1.1	Agreement to Lease and Description of Premises .....	1
1.2	Premises Partitioning .....	2
1.3	Use of the Premises.....	2
1.3.1	Permitted Uses .....	2
1.3.2	Access and Limitations on Use .....	2
1.3.3	Use of Loading Dock .....	3
1.4	Marine Containers.....	3
1.5	Entrance Gate.....	3
1.6	Common Areas .....	3
1.6.1	Right to Use .....	3
1.6.2	Port Work in the Common Area .....	3
1.6.3	Port Authority Over Common Areas .....	4
1.7	Port Right to Lease to Others.....	4
1.8	Right of First Refusal; Adjacent Space.....	4
1.8.1	Grant of Right .....	4
1.8.2	Process.....	4
1.8.3	Adjustment to Offer .....	4
1.8.4	Lease of Entire Warehouse .....	4
1.9	Compliance with All Laws .....	5
2.	TERM .....	5
3.	RENT.....	5
3.1	Rent.....	5
3.2	Taxes .....	5
3.3	Insurance.....	6
3.4	Security Deposit.....	6
3.5	Time and Place of Basic Rent Payment.....	7
3.6	Delinquency .....	7
3.7	Acceptance of Rent.....	7
4.	LESSEE'S OTHER OBLIGATIONS .....	7
4.1	Construction of Improvements .....	7
4.2	Maintenance and Repair .....	7
4.3	No Liens.....	8
4.4	Utilities.....	8
4.5	Signs.....	9
4.6	Fire Safety.....	9
4.7	Notice of Insurance Company Fire and Life Safety Recommendations.....	9
4.8	Port Access to Premises.....	9

5.	PORT AUTHORITY AND OBLIGATIONS .....	9
5.1	Delivery of Premises.....	9
5.2	Quiet Enjoyment.....	10
5.3	Condition of Premises.....	10
5.4	Port Maintenance and Repair Obligations .....	10
5.5	Joint Inspection .....	10
5.6	Notice of Maintenance and Repairs.....	11
5.7	Security Services/Limitation of Liability.....	11
6.	ENVIRONMENTAL OBLIGATIONS OF TENANT.....	11
6.1	Definitions.....	11
6.1.1	Hazardous Substance .....	11
6.1.2	Environmental Cost.....	11
6.1.3	Hazardous Substance Release .....	12
6.2	General Environmental Obligations of Lessee .....	12
6.3	Use of Hazardous Substances .....	12
6.4	Environmental Audits .....	12
6.4.1	Baseline Audit.....	12
6.4.2	Presumption .....	12
6.4.3	Exit Audit.....	13
6.4.4	Audit Requirements .....	13
6.5	Environmental Inspection .....	13
6.6	Lessee's Liability .....	13
6.6.1	Release of Hazardous Substance.....	13
6.6.2	Lessee's Liability for Environmental Cost .....	13
6.6.3	Limitation of Lessee's Liability .....	13
6.6.4	Pre-existing Contamination Revealed by Permitted Activities.....	14
6.7	Environmental Remediation .....	14
6.7.1	Immediate Response .....	14
6.7.2	Remediation .....	14
6.7.3	Report to the Port .....	14
6.7.4	Port's Approval Rights.....	14
6.8	Notice.....	14
6.9	Port's Right to Perform on Behalf of Lessee .....	15
7.	INDEMNITY, INSURANCE .....	15
7.1	General Indemnity; Reimbursement for Damages .....	15
7.2	Environmental Indemnity .....	15
7.3	Insurance Requirements.....	16
7.3.1	Certificates; Notice of Cancellation.....	16
7.3.2	Additional Insured; Separation of Insureds.....	16
7.3.3	Primary Coverage.....	16
7.3.4	Company Ratings.....	16
7.4	Required Insurance .....	16
7.4.1	General Liability Insurance.....	17

7.4.2	Automobile Liability Insurance .....	17
7.4.3	Workers' Compensation/Employer's Liability Insurance.....	17
7.4.4	Lessee's Risks.....	17
7.5	Periodic Review .....	17
7.6	Waiver of Subrogation.....	18
7.7	Survival of Indemnities.....	18
8.	DAMAGE OR DESTRUCTION.....	18
8.1	General .....	18
8.2	Reconstruction .....	18
9.	TERMINATION.....	18
9.1	Duties on Termination .....	18
9.2	Lessee's Personal Property.....	18
9.2.1	Removal Requirement.....	18
9.2.2	Time for Removal .....	19
9.3	Holding Over .....	19
10.	DEFAULT .....	19
10.1	Event of Default.....	19
10.1.1	Default in Rent.....	19
10.1.2	Default of Use Covenant.....	19
10.1.3	Default in Other Covenants.....	20
10.1.4	No Notice Required.....	20
10.1.5	Insolvency .....	20
10.1.6	Abandonment .....	20
10.1.7	Failure to Abide by Laws.....	20
10.2	Remedies on Default.....	21
10.2.1	Re-entry.....	21
10.2.2	Rent Recovery .....	21
10.2.3	Recovery of Damages .....	21
10.3	Termination of Lease .....	21
10.4	Remedies Cumulative and Nonexclusive .....	22
10.5	Port Curing of Lessee's Defaults.....	22
10.6	Default by Port.....	22
11.	ASSIGNMENT, SUBLEASE, MORTGAGE, AND TRANSFER.....	22
11.1	General Prohibition.....	22
11.2	Transfer by the Port .....	22
11.3	Estoppel Certificates .....	23
12.	GENERAL PROVISIONS .....	23
12.1	Covenants, Conditions, and Restrictions .....	23
12.2	Governing Law .....	23
12.3	Port and Lessee .....	23

12.4	No Benefit to Third Parties .....	23
12.5	Port Consent .....	24
12.6	No Implied Warranty .....	24
12.7	Notices .....	24
12.8	Time of the Essence .....	25
12.9	Nonwaiver .....	26
12.10	Survival .....	26
12.11	Partial Invalidity .....	26
12.12	No Light or Air Easement .....	26
12.13	Lease Subject to Bonds and Ordinances .....	26
12.14	Lease and Public Contract Laws .....	26
12.15	Limitation on Port Liability .....	26
12.16	Calculation of Time .....	26
12.17	Headings .....	27
12.18	Exhibits Incorporated by Reference .....	27
12.19	Modification .....	27
12.20	No Brokers .....	27
12.21	Attorney Fees .....	27
12.22	Entire Agreement .....	27
12.23	Successors .....	27
12.24	Joint and Several Obligations .....	28
12.25	Execution of Multiple Counterparts .....	28
12.26	Defined Terms .....	28
12.27	No Limit on Port's Powers .....	28

**LEASE OF IMPROVED SPACE AT TERMINAL 1**  
**between**  
**THE PORT OF PORTLAND**  
**and**  
**BENSON INDUSTRIES, INC.**

THIS LEASE, effective as of December 1, 2000 ("Effective Date") is between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and BENSON INDUSTRIES, INC., an Oregon corporation ("Lessee").

**RECITALS**

A. The Port is the owner of the real property known as Terminal One North ("T-1 North") located at 2500 NW Front Avenue, in Portland, Multnomah County, Oregon.

B. Lessee desires to lease a portion of T-1 North from the Port. Part of the space Lessee desires to lease is currently occupied by another tenant, whose lease term expires on or before December 31, 2000.

C. The Port is willing to lease to Lessee the portion of T-1 North that is currently available and to lease to Lessee additional space at T-1 North when it has been vacated by its current tenant.

NOW, THEREFORE, the parties, intending to be legally bound by the terms of this Lease and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, agree as follows:

**1. AGREEMENT TO LEASE PROPERTY**

**1.1 Agreement to Lease and Description of Premises**

The Port leases to Lessee and Lessee leases from the Port, on the terms and conditions stated below, the following:

(a) For the period from December 1, 2000 through the Expiration Date, as defined in Section 2, approximately Ten Thousand (10,000) square feet of space located on the west side of Warehouse 101 (the "Warehouse") on the northern portion of T-1 North shown on attached **Exhibit A**, together with all Improvements located thereon or to be located thereon; and

(b) For the period from January 1, 2001 through the Expiration Date, an additional approximately Twenty Thousand (20,000) square feet of warehouse space located on the same west side of the Warehouse on the northern portion of T-1 North and adjacent to the space described in (a) above and shown on attached **Exhibit B**, together with all Improvements located thereon or to be located thereon; provided that the rent commencement date of January 1, 2001 as to such additional 20,000-square-foot space shall be extended, day for day, that the Port is

delayed in delivering such 20,000-square-foot space to Lessee as a result of a holdover or default of the tenant currently occupying such space.

The space leased to Lessee pursuant to this Section 1.1 is hereinafter called the "Premises." As used in this Lease, the term "Improvements" shall mean all buildings, fences, driveways, sidewalks, infrastructure improvements, utilities, paved or parking areas, landscaping, and any other enhancements located on and made to the Premises by either the Port or Lessee.

## **1.2 Premises Partitioning**

The square footage leased to Lessee is only a portion of the approximately 65,387 total square feet of space located in the Warehouse. The Premises are not physically partitioned off from the rest of the Warehouse, and the Port provides no security services for the Warehouse, and Lessee hereby releases the Port from any loss or damage that may arise from the failure of the Premises to be physically partitioned from the rest of the Warehouse and/or from the absence of security services. The perimeter of the Premises may be marked by the Port in paint on the floor of the Warehouse prior to the Commencement Date. Lessee may, at its sole expense and with the prior written approval of the Port, install fencing to partition its separate space. If Lessee does so, the Port must be provided keys or combinations as necessary to maintain Port access to the Premises. Such fencing must be removed at expiration of this Lease and the Premises restored to their condition as of the Commencement Date.

## **1.3 Use of the Premises**

### **1.3.1 Permitted Uses**

Lessee shall use the Warehouse only for storage of finished windows ("Permitted Uses"). No manufacturing processes of any kind shall be allowed on the Premises. No Hazardous Substances, as that term is defined in Section 6.1.1, may be brought onto, used, handled, treated, recycled, disposed of, transferred, transported, deposited, placed, or stored on the Premises, except as specifically provided in Section 6.3. No underground storage tanks, mobile storage tanks (including fueling trucks), or above-ground storage tanks for the storage of Hazardous Substances shall be installed or operated on the Premises.

### **1.3.2 Access and Limitations on Use**

Lessee shall not use the Premises or Common Areas in any way that causes the uniform live load to exceed One Thousand (1,000) pounds per square foot, and in any event Lessee shall not use areas of T-1 North located on or over the dock in any way that causes the uniform live load to exceed Six Hundred (600) pounds per square foot. The Port provides no warranty as to weight load conditions. If damage occurs as determined by the Port in its sole discretion, the Port, at its election and in addition to all of its other remedies under this Lease, may require Lessee to reduce load or relocate if space is available or the Port may elect to terminate this Lease. Lessee is not permitted to drive its vehicles over dock areas, which are approximately shown on Exhibit A. Lessee shall not, without the prior written consent of the Port, use any vehicles or equipment, or make any use of the Premises or Common Areas, that would violate any local noise ordinance or cause substantial vibrations, fumes, or electronic interference. Lessee shall not permit anyone else to use the Premises nor shall Lessee permit

anything to be done on the Premises that: (i) adversely affects or is likely to adversely affect the Premises; (ii) creates any condition that may be a safety hazard; (iii) creates or tends to create a hazard or a nuisance; or (iv) unreasonably inconveniences other tenants or occupants of T-1 North. No other use may be made of the Premises without the prior written approval of the Port, which approval shall be in the sole discretion of the Port.

### **1.3.3 Use of Loading Dock**

Lessee shall have the nonexclusive right to use the loading dock located on the northwest corner of the Warehouse as shown on **Exhibit A** and nonexclusive use of the entire west side of the loading dock when Lessee assumes additional square footage. Lessee shall cooperate with other tenants and users of Warehouse, if any, in its use of the loading dock.

### **1.4 Marine Containers**

No unloading or loading of marine containers, whether containing domestic or international freight, may take place on or to or from the Premises or Common Areas. Failure to comply with this provision may result in immediate termination of this Lease. No use may be made of any dock facility at T-1 North whatsoever for any docking, loading or unloading of any vessels.

### **1.5 Entrance Gate**

Lessee shall use, and cause its agents, employees, representatives, invitees, and all vehicle traffic associated with Lessee's operations to use, Gate 21 as shown on **Exhibit B** as the primary ingress and egress route for access to and from the Premises. Lessee's use of Gate 21 shall not be exclusive to Lessee but shall be shared with other Port tenants and users of T-1 North. Lessee shall cooperate with other tenants and users of T-1 North in keeping Gate 21 closed when not in use during business hours (7 am to 5 pm, Monday through Friday, unless Lessee is otherwise notified by the Port). The Port shall have no liability to Lessee for any loss resulting from the failure of the Port, other tenants, or other parties to close gates to T-1 North.

### **1.6 Common Areas**

#### **1.6.1 Right to Use**

Lessee shall have a nonexclusive right to use Common Areas in T-1 North in common with the Port and with others to whom the Port has granted or may grant such right and only in a manner consistent with Lessee's use of the Premises described in Section 1.3. The term "Common Areas" shall mean existing access ways that the Port now or hereafter designates as Common Areas. Common Areas shall also include common doors into and common passageways located within the Warehouse and restroom facilities, which may be used by other users or tenants leasing space within the Warehouse. Lessee shall not block any portion of the Common Areas, including those both inside the Warehouse and in the yard areas, driveways or rail track rights-of-way, in any way which may prevent use by the Port or other tenants or users.

#### **1.6.2 Port Work in the Common Area**

Should the Port, of its own accord, undertake any repair, maintenance or improvement work in or on the Common Areas, the Port shall have no liability for interference with Lessee's use of the Common Areas which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other



eviction of Lessee. Rent shall not be reduced during any such repair period. Any repair of damage caused by negligence or breach of this Lease by Lessee, Lessee's employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be made at Lessee's sole expense.

### **1.6.3 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: (i) to adjust the boundaries of, expand or delete Common Areas; (ii) to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; (iii) to close all or any portion of the Common Areas; (iv) to construct additional buildings or other improvements in the Common Areas; and (v) to evict anyone from the Common Areas who fails to comply with any applicable laws, including applicable Port Rules.

### **1.7 Port Right to Lease to Others**

The Port reserves the right to lease space other than the Premises within the Warehouse to other tenants, and to provide those other tenants access to Common Areas within the Warehouse and in the yard areas. The Port has no obligation either to partition off the separate spaces of tenants or to take any security measures.

### **1.8 Right of First Refusal; Adjacent Space**

#### **1.8.1 Grant of Right**

The Port hereby grants Lessee a right of first refusal to lease those portions of the Warehouse adjacent to and contiguous with the Premises (the "Adjacent Space") upon the terms and conditions stated in this Section 1.8.

#### **1.8.2 Process**

If the Port receives an offer to lease the Adjacent Space and it intends to accept the offer, or if the Port decides to make an offer to lease the Adjacent Space, the Port will notify Lessee by telephone or in person verbally of the rent, term and other material factors as determined by the Port in its sole discretion. Lessee will have the right to accept the offer within forty-eight hours (48) after the Port gives Lessee notice of such offer. If Lessee so accepts the offer, Lessee will be bound to lease the Adjacent Space in accordance with the terms of the offer.

#### **1.8.3 Adjustment to Offer**

If Lessee declines an offer and the terms of the offer thereafter change materially, as determined by the Port in its sole discretion, such revised offer shall be submitted to Lessee as a new offer pursuant to Section 1.8.2 above.

#### **1.8.4 Lease of Entire Warehouse**

Subject to Sections 1.8.1, 1.8.2 and 1.9 above, the Port shall have the right to terminate this Lease at any time after thirty (30) days prior notice to Lessee in the event the Port receives an offer to lease the entirety of the Warehouse, including without limitation the Premises and the Adjacent Space.

### **1.9 Compliance with All Laws**

Lessee's use of the Premises and Common Area must comply with all applicable laws, ordinances, rules and regulations of state, federal, city, county, or other public government authority, including, but not limited to, local fire codes and zoning codes, and Port ordinances and any published Port Rules and Regulations (collectively, "Port Rules"). Lessee shall promptly provide to the Port copies of all communications from any such government entity which relate to Lessee's noncompliance or alleged noncompliance with any law or other government requirement.

### **2. TERM**

The Term of this Lease shall commence on December 1, 2000 ("Commencement Date") and terminate June 30, 2001 ("Expiration Date").

### **3. RENT**

#### **3.1 Rent**

From December 1, 2000 to December 31, 2000 Lessee shall pay to the Port monthly rent in the amount of THIRTY TWO HUNDRED DOLLARS (\$3,200) which is based upon a rate of \$0.32 per square foot per month multiplied by 10,000 square feet.

From January 1, 2001 to June 30, 2001 Lessee shall pay to the Port monthly rent in the amount of NINETY SIX HUNDRED DOLLARS (\$9,600) which is based upon a rate of \$0.32 per square foot per month multiplied by 30,000 square feet; provided that such rent shall be abated, on a day-for-day basis, in an amount equal to \$0.32 per month per square foot of space that Lessee is prevented from occupying as of January 1, 2001, as described in Section 1.1 above.

If Lessee uses an area greater than 30,000 square feet, the monthly rent amount, and the Premises, if not leased to others, shall be increased accordingly at \$0.32 cents per square foot per month to include a monthly maintenance charge, property taxes and insurance. After Lessee takes possession of the entire 30,000 square feet as described in Sections 1.1 and 3.1 above; in no case will monthly rent be based upon fewer square feet than 30,000 square feet. Said monthly rent shall be referred to as "Basic Rent." All other sums which become payable by Lessee to the Port shall be considered "Additional Rent" due under this Lease. "Rent," as used herein, shall mean all such Additional Rent, together with Basic Rent.

#### **3.2 Taxes**

Lessee understands that the Premises are exempt from real property taxes until leased to a taxable entity, and as a result of Lessee's taking possession of the Premises, real property taxes will likely come due. The Basic Rent payable hereunder in the amount of \$0.32 per square foot per month includes \$0.03 per square foot per month for real property taxes. When the tax bill applicable to the Premises is received, the amount collected by the Port shall be reconciled with the actual tax bill. If the tax bill the Port receives includes property other than the Premises, the Port shall determine, at its sole discretion, the proportionate share attributable to the Premises. Lessee shall immediately pay to the Port any shortfall if the taxes were underestimated. Any overage will be credited to the Port's estimate of Lessee's future tax obligation or reimbursed to

Lessee, as the Port determines in its sole discretion. In all events, Lessee shall be responsible for paying to the Port the amount of all taxes and assessments of any public authority levied against any taxable possessory right Lessee may have in or to all taxable property, real or personal, owned by Lessee in or about the Premises, including any other tax or charge levied wholly or partly in lieu thereof. **In the event that the term of this Lease ends after the end of any tax year, Lessee shall be responsible for payment of property taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law (currently the tax year runs from July 1 to June 30).**

### 3.3 Insurance

Lessee shall be responsible for insuring its personal property within the Warehouse and meeting the insurance requirements set forth in Sections 7.3 and 7.4. Lessee shall also be responsible for paying to the Port its share of the Port's costs to insure the Warehouse and a portion of the Common Areas. The Basic Rent payable hereunder in the amount of \$0.32 per square foot per month includes \$0.03 per square foot per month for Lessee's share of such costs incurred by the Port. Any increases in such insurance in excess of \$0.03 per square foot per month shall be passed to Lessee payable to the Port, and Lessee shall be responsible for paying all of any increase if the increase is caused by or is attributable to Lessee's activities in the Premises or Common Areas.

### 3.4 Security Deposit

Lessee shall deposit with the Port, and continuously maintain, cash or an irrevocable standby letter of credit, drawn on a bank acceptable to the Port in a form acceptable to the Port, upon execution of this Lease, in the amount of SIX THOUSAND DOLLARS (\$6,000) ("Deposit"). The Deposit shall secure Lessee's full and faithful performance and observance of all of Lessee's obligations under this Lease and under any other written agreement between Lessee and the Port specifically referring to the Deposit in this Section 3.4. The Deposit shall not be considered to be held in trust by the Port for the benefit of Lessee and shall not be considered an advance payment of Rent or a measure of the Port's damages in the case of an Event of Default, as defined in Section 10.1, by Lessee. The Port may, but shall not be obligated to, draw upon and apply the Security Deposit to: (i) pay any Basic Rent or other Rent or property taxes not paid on or before the date it is due and the Port shall not be required to give notice or opportunity to cure before drawing on the Security Deposit; and/or (ii) remedy any violation of this Lease, after Lessee has received notice and opportunity to cure, if such notice and opportunity to cure is required under this Lease. The amount of property taxes due for an entire year shall be deducted from the Security Deposit should Lessee hold over beyond June 30, 2001. Further, the Port may draw on the entire Security Deposit immediately, without notice to Lessee, upon receipt of a notice of non-renewal of the letter of credit that constitutes the Security Deposit. If the Port applies any of the Security Deposit to any of the above, Lessee shall, immediately upon demand, replenish the Security Deposit to its full amount. If Lessee fully performs all of its obligations under this Lease, the Security Deposit, or any balance remaining, will be released within thirty (30) days from the date of termination of this Lease and delivery of the Premises to the Port. However, if any question exists concerning Lessee's full compliance with the Lease, or if there is any obligation under this Lease to be performed after the termination date of this Lease, the Port shall be entitled to require that the Security Deposit remain in place until the Port is fully satisfied that there has been no violation of the Lease and

all obligations due under this Lease have been fully performed, even if it takes the Port longer than thirty (30) days to make such a determination to the Port's satisfaction. If the security deposit is cash, it need not be kept in a separate account, it will not earn interest, and it will be subject to all of the provisions referenced above.

### **3.5 Time and Place of Basic Rent Payment**

Lessee shall make payment of the Basic Rent, in advance, on or before the first day of each month ("Due Date"), without offset, abatement, or deduction to the Port to the following address or such other address as the Port may later designate as provided herein:

The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, Oregon 97208-4900

### **3.6 Delinquency**

All Rent not paid by Lessee within ten (10) days of the Due Date shall bear a delinquency charge of eighteen percent (18%) per annum or, if less, the maximum rate of interest allowed by law, from the date of delinquency until paid. The delinquency charge on the overdue amounts shall be subject to periodic change in the sole discretion of the Port. Imposition of the delinquency charge shall not constitute a waiver of any other remedies available for failure to timely pay Rent. Acceptance of any delinquency charge by the Port shall in no event constitute a waiver of Lessee's Default with respect to the overdue amount in question nor prevent the Port from exercising any of the other rights and remedies granted under this Lease or by law.

### **3.7 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent shall not constitute a waiver of any Event of Default (defined in Section 10 below). It is hereby agreed that any endorsements or statements appearing on checks of waiver, compromise, payment in full, or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in Default and obligated to pay all Rent due, even if the Port has accepted a partial or late payment of Rent.

## **4. LESSEE'S OTHER OBLIGATIONS**

### **4.1 Construction of Improvements**

Lessee shall undertake no construction, alteration, or changes on or to the Premises.

### **4.2 Maintenance and Repair**

Lessee maintenance responsibilities shall include changing light bulbs, restroom cleaning and maintenance, fixing toilets, cleaning and housekeeping, repairing door fixtures or lifts used by Lessee, fixing broken windows, doors, or other fixtures, repairing loading docks, repairing or maintaining pavement within the Premises in the Warehouse, and repairing or maintaining any improvements installed by Lessee. Reasonable wear and tear excepted, Lessee shall also be liable for any damage to the Premises caused by Lessee's or Lessee's agents, subtenants, employees, contractors, suppliers, or invitees use of the Premises. Because of a Port labor agreement requirement, Port labor may be required to perform maintenance or repairs to the

Premises even if the responsibility for completing and paying for such maintenance is the responsibility of Lessee. The Port reserves the right to perform the required maintenance or repair after providing notice to Lessee, and the reasonable cost for such maintenance or repairs shall be billed by the Port to Lessee. However, the Port shall have no obligation to make such repairs and retains all rights under Section 10. Lessee shall provide proper containers for trash and garbage and arrange and pay for janitorial and garbage services or make other arrangements acceptable to the Port to keep the Premises free and clear of rubbish, debris, and litter at all times.

#### **4.3 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities (subject to the provisions of Section 4.4), furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. If any lien is filed against the Premises, which Lessee wishes to protest, then Lessee shall immediately deposit cash with the Port or procure a bond acceptable to the Port in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish the cash or bond acceptable to the Port within twenty (20) days after the filing thereof shall constitute an Event of Default under this Lease, and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee, and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Lessee shall not encumber the Premises or any Improvements thereon without prior written approval of the Port.

#### **4.4 Utilities**

The Warehouse has an electrical submeter, which determines electricity usage in the Warehouse. At any time there is more than one tenant in the Warehouse, Lessee shall be responsible for paying its pro-rata share of such submeter bill, which share shall be determined by the Port in its sole discretion. So long as Lessee is the only tenant in the Warehouse, Lessee shall be responsible for payment of this entire submeter bill. Lessee understands and agrees that Lessee's use of water and sanitary sewer service in the Warehouse is not currently separately metered. The Port will pay the electrical bill and invoice Lessee monthly for reimbursement. At any time that there is more than one tenant inside the Warehouse, charges for electricity shall be allocated to Lessee based on an allocation formula developed by the Port. The Port will provide the proposed formula to Lessee for review, within thirty (30) days of the Effective Date. If the Port and Lessee cannot agree on the methodology within 14 days of the date the Port notifies Lessee of the proposed formula, the Port shall install, at Lessee's sole expense, a meter to record Lessee's own electricity consumption, and/or that of other tenants. As long as Lessee's use of water and sewer is limited to reasonable use of the restroom facilities within the Warehouse, the Port will pay the cost of water and sewer service. In the event Lessee wishes to connect to the water and/or sanitary sewer system for use beyond reasonable use of the restroom, Lessee shall be responsible for the cost of installation of a submeter to measure its use. Lessee shall promptly pay any charges for telephone or any other utilities furnished to the Premises or Improvements at the request of Lessee, including any and all connection fees and impervious surface fees charged by the governmental entity having jurisdiction. If any upgrades to the utilities are required to accommodate Lessee's use of the Premises, the cost of such upgrades shall be paid by Lessee. Installation of telephone or any upgrades must be pre-approved, in writing, by the Port, and meet all City, State, and insurance requirements.

#### **4.5 Signs**

Lessee shall neither erect nor install nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which consent the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

#### **4.6 Fire Safety**

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises, and to that end, shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes and the Port's insurance carrier for the purpose of protecting the Premises and restricting the spread of any fire from the Premises.

#### **4.7 Notice of Insurance Company Fire and Life Safety Recommendations**

In the event the Port's insurance carriers make recommendations regarding Lessee's use of the Premises for the purpose of protecting the Premises from fire or other perils, the Port will notify Lessee of the requirement in writing and will facilitate any required review of the carrier's recommendations with Lessee and such carrier. Lessee shall be required to comply with carrier recommendations unless notified otherwise by carrier or the Port.

#### **4.8 Port Access to Premises**

The Port and its representatives, including the Port's insurance carriers, shall have the right to enter upon the Premises for the purposes of: (i) confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made with reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. The Port hereby notifies Lessee that its representatives may enter the underground utility corridor located within the Warehouse, as necessary to perform maintenance or repair operations. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry, except to the extent caused by the gross negligence or willful misconduct of the Port. The Port shall be given keys with which to unlock all gates or doors in, upon, or about any building located on the Premises, and the Port shall have the right to use any and all means which the Port may deem reasonable to open such doors in an emergency in order to obtain entry into any such building located on the Premises.

### **5. PORT AUTHORITY AND OBLIGATIONS**

#### **5.1 Delivery of Premises**

Lessee shall have the right to possession of the Premises under this Lease as of the Commencement Date.

## **5.2 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights under this Lease and its rights of condemnation under Oregon law, and the rights of other tenants of T-1 North, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

## **5.3 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses or the availability of utilities needed for Lessee's intended purposes. Lessee has inspected and accepts the Premises in "AS-IS" condition, subject to the Port's obligations under Section 5.4 of this Lease. The Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws, including all requirements of the Americans With Disabilities Act ("ADA"). It shall be Lessee's responsibility to determine that the weight limitation set forth in Section 1.3.2 are met and Lessee shall be responsible for any damage to the Premises that results from excess loads.

## **5.4 Port Maintenance and Repair Obligations**

The Port's maintenance responsibilities shall include maintenance of the roof, exterior walls, and sprinkler system. If Port maintenance costs exceed an amount deemed unreasonable by the Port, in its sole discretion, this Lease will be terminated as provided herein. Maintenance does not include repairing damage to the Premises caused by Lessee, which shall be the responsibility of the Lessee. The Port shall have no liability for interference with Lessee's use of the Premises which might result from the Port's repair and maintenance efforts, and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Rent shall not be reduced during any such repair period. Any repair of damage caused by negligence or breach of this Lease by Lessee or Lessee's subtenants, employees, agents, contractors, or invitees shall be Lessee's responsibility and shall be made at Lessee's sole expense. The Port anticipates making certain repairs to the roof during the Term, and Lessee agrees to cooperate reasonably with the Port and its contractors and agents in the making of such repairs, including without limitation moving Lessee's inventory and other personal property periodically within the Warehouse as reasonably necessary to accommodate the making of such repairs.

## **5.5 Joint Inspection**

A joint inspection of the Premises by the Port and Lessee shall be performed at the beginning of the Lease Term and, at the Port's option, shall be performed periodically thereafter during the term of the Lease to assess the condition of the entire Premises, including the environmental condition, and to document any necessary maintenance and repairs ("Joint Inspection"). The Joint Inspection shall be documented in writing by the Port ("Joint Inspection Report") and shall include a list of all necessary maintenance and repairs to the Premises, as determined by the Port in its sole discretion. A copy of the Joint Inspection Report shall be provided to Lessee within 30 days after completion of the Joint Inspection. Said maintenance and repairs shall be completed by the Port, or by Lessee as determined by the Port, in a timely manner. Responsibility for bearing the costs for the maintenance and repairs noted in the Joint

Inspection shall be determined in accordance with Sections 4.2 and 5.4 of this Lease and shall be stated in the Joint Inspection Report prepared by the Port. Upon completion of said maintenance and repairs, the Port shall invoice Lessee for the cost of those items determined to be the responsibility of Lessee. Said invoice shall be due and payable within 30 days of the date of invoice.

#### **5.6 Notice of Maintenance and Repairs**

During the term of this Lease, Lessee shall notify the Port in writing of any necessary maintenance and repairs which were not identified during the Joint Inspection. Responsibility for bearing costs for said maintenance and repairs shall be determined in accordance with Section 4.2 and Section 5.4. The Port shall respond to Lessee's request within seven (7) business days of receipt of notice. Upon completion of said maintenance and repairs, the Port shall invoice Lessee for costs of those items determined to be the responsibility of Lessee. Said invoice shall be due and payable within 30 days of the date of invoice.

#### **5.7 Security Services/Limitation of Liability**

The Port provides no security services for T-1 North. The Lessee agrees that it is leasing the Premises at its own risk, and the Port shall have no liability to Lessee and Lessee shall have no claim against the Port for any damage, theft, vandalism or injury caused by the condition of the Premises, or by lack of security services or acts or omissions of other tenants of the Warehouse or T-1 North.

### **6. ENVIRONMENTAL OBLIGATIONS OF TENANT**

#### **6.1 Definitions**

For the purposes of this Lease, the following definitions shall apply:

##### **6.1.1 Hazardous Substance**

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous, or regulated wastes or materials, or any other similar term in or under any applicable laws and regulations. Hazardous Substance shall also include, but not be limited to, fuels, petroleum, and petroleum-derived products.

##### **6.1.2 Environmental Cost**

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any applicable laws and regulations; (ii) claims for damages, response costs, audit costs, fines, fees, or other relief relating to matters addressed in any applicable laws and regulations; (iii) injunctive relief relating to matters addressed in any applicable laws and regulations; (iv) Hazardous Substance Releases; and (v) violations of any environmental provisions of this Lease. Costs and damages, as used in this Section, shall include, but not be limited to: (a) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring, and maintenance; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before, or after trial, appeal, or administrative proceedings; (c) lost revenue; and (d) diminution of value, loss, or restriction on use of property.



### **6.1.3 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable laws and regulations.

### **6.2 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises: (i) in compliance with applicable laws and regulations and the environmental provisions of this Lease; (ii) in cooperation with the Port in the Port's efforts to comply with applicable laws and regulations; and (iii) in adherence with best management practices applicable to Lessee's use of the Premises. Lessee shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of laws or regulations by any party on or relating to the Premises.

### **6.3 Use of Hazardous Substances**

Lessee shall not use, handle or store Hazardous Substances on the Premises, except that Lessee may use fuels and lubricants to run its fork lifts and vehicles on the Premises so long as such fuels and lubricants are fully contained within such fork lifts and vehicles. No maintenance of vehicles or forklifts may be conducted on the Premises.

### **6.4 Environmental Audits**

#### **6.4.1 Baseline Audit**

An environmental audit of T-1 North, including the Premises, was completed and a report issued on July 13, 1998 by EMCON ("Initial Audit"), a copy of which was previously provided to Lessee. The Port has conducted a visual inspection of the Premises to determine that there has been no change from the condition of the Premises at the time of the audit. The parties agree that the Initial Audit shall serve as the "Baseline Audit" of the Premises for the purposes of this Lease.

#### **6.4.2 Presumption**

The Baseline Audit shall be used as a baseline for determination of future Lessee liability. If the presence of a Hazardous Substance, a Hazardous Substance Release, violation of Environmental Law or violation of an environmental provision of this Lease is discovered or disclosed, that was not discovered or disclosed in the Baseline Audit, then a rebuttable presumption will exist, as to matters within the scope of the Baseline Audit, that Lessee is the cause of and is responsible for all response, remediation, restoration and Environmental Cost arising from such Hazardous Substance, Hazardous Substance Release, violation of Environmental Law or violation of any environmental provision of this Lease. The presumption established by this Section shall expire after the results of the Exit Audit have been obtained and all response, remediation and full payment of Environmental Cost for which Lessee is responsible under this Lease have been completed.

#### **6.4.3 Exit Audit**

The Port shall conduct an Environmental Audit ("Exit Audit") of the Premises to determine, at a minimum: (i) the environmental condition of the Premises; (ii) whether any Hazardous Substance Release has occurred or exists on or about the Premises; and (iii) whether there is evidence of any violation of applicable laws and regulations or the environmental provisions of this Lease. The Exit Audit shall be performed not more than sixty (60) days prior to the scheduled Expiration Date of this Lease. In the event this Lease is terminated prior to the specified termination date for any reason, the Port shall cause the Exit Audit to be completed within sixty (60) days of such actual termination date of this Lease.

#### **6.4.4 Audit Requirements**

The scope of all Environmental Audits shall be determined solely by the Port. If any Environmental Audit performed under this Lease recommends additional testing or analysis or recommends an additional audit then, unless otherwise agreed to, in writing, by the Port and Lessee, Lessee shall perform the additional recommended testing, analysis or audit and the records and results of such additional work shall be considered a part of the underlying audit that triggered the need for the additional work. The Port and Lessee shall each receive a signed copy of any Environmental Audit report prepared pursuant to this Lease.

#### **6.5 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises and Lessee's operations on and use of the Premises: (i) for the presence of and/or Lessee's management of Hazardous Substances; (ii) for the purpose of sampling Lessee's stormwater discharge; (iii) for compliance with Environmental Law or the environmental provisions of this Lease; and (iv) to facilitate the Port's environmental management, permitting and analysis related to the Premises or any other property of the Port.

#### **6.6 Lessee's Liability**

##### **6.6.1 Release of Hazardous Substance**

Except as provided in Section 6.6.3, Lessee shall be responsible for any Hazardous Substance Release on the Premises, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Lessee's occupancy or use of the Premises during the Lease Term or occurring or continuing after the Lease Term.

##### **6.6.2 Lessee's Liability for Environmental Cost**

Except as provided in Section 6.6.3, Lessee shall be responsible for all Environmental Costs arising under this Lease.

##### **6.6.3 Limitation of Lessee's Liability**

Notwithstanding anything to the contrary provided in this Lease, Lessee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases or Environmental Cost arising therefrom that: (i) existed on the Premises prior to Lessee's entry onto or taking possession of the Premises (except if caused by Lessee or Lessee's agents,

employees, or contractors); or (ii) are caused by the Port or the agents, employees, or contractors of the Port after Lessee takes occupancy of the Premises.

#### **6.6.4 Pre-existing Contamination Revealed by Permitted Activities**

In the event that Lessee's activities on the Premises reveal a pre-existing contamination of the Premises, Lessee releases the Port and waives any claim against the Port for damages or costs caused by the delay arising from the Port's efforts to remediate such pre-existing contamination.

### **6.7 Environmental Remediation**

#### **6.7.1 Immediate Response**

In the event of a violation of applicable laws and regulations, a violation of an environmental provision of this Lease, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Lessee is responsible under this Lease, Lessee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain, and stop the Hazardous Substance Release and remove the Hazardous Substance.

#### **6.7.2 Remediation**

Lessee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any applicable laws and regulations or environmental provision of this Lease is corrected. Lessee shall remediate, at Lessee's sole expense, all Hazardous Substances for which Lessee is responsible under this Lease or under any applicable laws and regulations and shall restore the Premises or other affected property or water to its baseline condition.

#### **6.7.3 Report to the Port**

Within thirty (30) days following completion of any investigatory, containment, remediation, and/or removal action required by this Lease, Lessee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.

#### **6.7.4 Port's Approval Rights**

Except in the case of an emergency or an agency order requiring immediate action, Lessee shall give the Port advance notice before beginning any investigatory, remediation, or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation, and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Lease or by applicable laws and regulations, whether on the Premises or on any affected property or water. The Port will have the right to require Lessee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation, and removal activities and/or require Lessee to seek a statement from DEQ of "No Further Action."

### **6.8 Notice**

Lessee shall promptly notify the Port upon becoming aware of: (i) a violation or alleged violation of any applicable laws and regulations related to the Premises or to Lessee's occupation or use of the Premises or any environmental provision of this Lease; and (ii) any Hazardous

Substance Release on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any business day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number is (503) 335-1111.

#### **6.9 Port's Right to Perform on Behalf of Lessee**

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving Lessee seven (7) days' written notice, to perform Lessee's obligations arising under this Lease and charge Lessee the resulting Environmental Cost. The Port may not commence performance on behalf of Lessee under this Section if, within the seven (7)-day notice period, Lessee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

### **7. INDEMNITY, INSURANCE**

#### **7.1 General Indemnity; Reimbursement for Damages**

Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against, and reimburse the Port for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively, "Costs") which may be imposed upon or claimed against or incurred by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's gross negligence or willful misconduct: (i) any act, omission, or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees, or contractors; (ii) any use, occupation, management, or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (iii) any condition created in or about the Premises by any party, including any accident, injury, or damage occurring on or about the Premises after the Effective Date; (iv) any breach, violation, or nonperformance of any of Lessee's obligations under this Lease; and/or (v) any damage caused by Lessee on or to the Premises. For purposes of this Section 7.1 (i) through (v) and Section 7.2, below, "Lessee" shall be deemed to include Lessee and Lessee's sublessees and licensees and all respective partners, officers, directors, agents, employees, invitees, and/or contractors.

#### **7.2 Environmental Indemnity**

Without in any way limiting the generality of Section 7.1, Lessee shall be solely responsible for and agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against all Environmental Costs claimed against or assessed against the Port or incurred by the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity at or about the Premises after the Effective Date, or earlier if caused by Lessee or Lessee's agents or invitees. This indemnification shall require Lessee to reimburse the Port for any diminution in value of the Premises, or other adjacent or nearby Port property, caused by Hazardous Substances, including damages for loss of or restriction on use of rentable or usable property or of any amenity of the Premises or any other Port property, including damages arising from any adverse impact on marketing of property in or near the Premises, including other Port property. Lessee's obligations shall not apply if the

Hazardous Substances were deposited on the Premises by the Port. Lessee shall be solely responsible to assure that no person brings any Hazardous Substance onto the Premises, except as permitted by this Lease. Notwithstanding the foregoing, Lessee shall not indemnify the Port for any actions of the Port or the Port's employees, agents, or contractors that cause environmental damage or a violation of any Environmental Law on, about, or affecting the Premises.

### **7.3 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

#### **7.3.1 Certificates; Notice of Cancellation**

On or before the Effective Date and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance policies required under this Section. No insurance policy may be canceled, materially revised, or non-renewed without at least thirty (30) days' prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the Lease Term. Insurance allowed to lapse without Port consent shall be deemed an immediate Event of Default under this Lease. The Port shall also be given certified copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Port to identify a deficiency from evidence that is provided, shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

#### **7.3.2 Additional Insured; Separation of Insureds**

The Port shall be named as an additional insured in each general liability policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Office ("ISO"), or its successor organization.

#### **7.3.3 Primary Coverage**

The required policies shall provide that the coverage is primary and will not seek any contribution from any insurance or self-insurance carried by the Port.

#### **7.3.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon thirty- (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

### **7.4 Required Insurance**

At all times during this Lease, Lessee shall provide and maintain the following types of coverage:

#### **7.4.1 General Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises, operations, independent contractors, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall be written on an ISO form CG 00 01 01 96 (or a substitute form providing equivalent coverage) in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Coverage shall include fire legal liability insurance in an amount of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) per occurrence.

#### **7.4.2 Automobile Liability Insurance**

Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property and relating to the use, loading, or unloading of any of Lessee's automobiles (including owned, hired, and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) each accident.

#### **7.4.3 Workers' Compensation/Employer's Liability Insurance**

Lessee shall maintain in force workers compensation and employers liability insurance for all of Lessee's employees subject to the requirements of Oregon law, and the U.S. Longshore and Harbor Workers' Act, if applicable. The amount of employers liability coverage shall be not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per accident and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon (and the U.S. Department of Labor, if applicable) and a policy of excess workers compensation and employers liability insurance.

#### **7.4.4 Lessee's Risks**

Port insurance covers the building shell only. Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (i) business interruption, such as gross earnings, extra expense, or similar coverage; (ii) personal property, fixtures, equipment, inventory, or supplies; (iii) Lessee's improvements and betterments; and/or (iv) automobile physical damage and/or theft. In no event shall the Port be liable for any (a) business interruption or other consequential loss sustained by Lessee; (b) damage to or loss of personal property, fixtures, equipment, inventory, supplies, or Lessee's improvements and betterments; or (c) damage to or loss of an automobile, whether or not such loss is insured.

#### **7.5 Periodic Review**

The Port shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event the Port reasonably determines that such types, limits, and/or terms should be changed, the Port will give Lessee a minimum of thirty (30) days' notice of such determination, and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

## **7.6 Waiver of Subrogation**

Lessee waives any right of action that it and/or its insurance carrier(s) might have against the Port (including the Port's employees, officers, commissioners, or agents) for any loss, cost, damage, or expense (collectively "Loss") that is covered by any property, cargo, or automobile physical damage insurance policy or policies required to be maintained by Lessee under this Lease and/or otherwise maintained by Lessee. If any of Lessee's policies do not allow the insured to waive the insurer's rights of recovery prior to a Loss, Lessee shall cause it to be endorsed to allow the waivers of subrogation required by this Section 7.6.

## **7.7 Survival of Indemnities**

The indemnity agreements set forth in this Section 7 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

# **8. DAMAGE OR DESTRUCTION**

## **8.1 General**

Lessee shall immediately notify the Port of damage or destruction to the Premises in excess of FIVE THOUSAND DOLLARS (\$5,000) (herein "Casualty").

## **8.2 Reconstruction**

In the event of a Casualty, the Port shall have the option to either terminate this Lease or to restore or replace the damaged Premises (excluding any improvements made by Lessee, who shall be Lessee's responsibility). The Port shall notify the Lessee of the Port's intent to terminate the Lease or to restore the Premises within thirty (30) days of the date the Casualty occurred. If the Port chooses to terminate this Lease under the provisions set forth in this Section, all Improvements made by Lessee and other property required to be removed by the Lessee pursuant to Section 9 must be removed from the Premises. During any restoration, Rent shall continue to be paid unless otherwise agreed to in writing by the Port. Basic Rent shall be abated from the date of the Casualty through completion of the repair of damages to the Premises, but only to the extent the Premises are unusable, except that there shall be no rent abatement where the damage occurred due to the fault of Lessee. In the event of termination, the Port shall not be required to reimburse Lessee any prepaid Rent. Any restoration of the Premises shall comply with all terms of this Lease.

# **9. TERMINATION**

## **9.1 Duties on Termination**

Upon termination of the Lease for any reason, Lessee shall deliver all keys to the Port and surrender the Premises and all Improvements in good and clean condition. All repair and removal for which Lessee is responsible shall be completed prior to termination and surrender of the Premises.

## **9.2 Lessee's Personal Property**

### **9.2.1 Removal Requirement**

Personal property, detachable curtains, blinds, furnishings, and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee, at Lessee's

expense (Lessee's "Personal Property"). At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove from the Premises any and all of Lessee's removable Personal Property and shall repair any damage to the Premises resulting from the installation or removal of such Personal Property. Title to any items of Lessee's Personal Property which remain on the Premises after the termination date of this Lease may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (i) retaining any or all of such Personal Property without any requirement to account to Lessee therefor; or (ii) removing and disposing of any or all of such Personal Property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then-current interest rate, from Lessee upon demand.

### **9.2.2 Time for Removal**

The time for removal of any Improvements or Personal Property Lessee is required to remove from the Premises upon termination shall be within thirty (30) days of the actual termination date. Lessee must continue to pay all Rent until all removal and cleanup is completed.

### **9.3 Holding Over**

If Lessee holds over after this Lease terminates, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance, at the Port's sole discretion. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by this Lease, except that the tenancy shall be from month-to-month, subject to the payment of all Rent in advance, with the monthly Basic Rent being equal to one-hundred fifty percent (150%) of Basic Rent per month. **If Lessee holds over past June 30, 2001, Lessee shall be responsible for payment of taxes for a full year, as stated in Section 3.3.** Such holdover tenancy may be terminated at any time upon one month's written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to evict Lessee, but the Port may still collect a charge for use of the Premises at the holdover rate, plus Additional Rent, as stated in this Section. Nothing contained herein shall be construed as consent by the Port for Lessee to holdover.

## **10. DEFAULT**

### **10.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default (also referred to as a "Default"):

#### **10.1.1 Default in Rent**

Failure of Lessee to pay any Rent or other amount payable to the Port or to others as provided herein within ten (10) days of the date due. No notice by the Port that Rent or such other amount is past due shall be required.

#### **10.1.2 Default of Use Covenant**

Failure of Lessee to immediately cure a violation of the use provisions of this Lease, after notice by the Port describing the nature of the Default, shall result in immediate termination of this Lease.



### **10.1.3 Default in Other Covenants**

Unless otherwise provided in this Section 10, failure of Lessee to comply with any term, covenant, or condition of this Lease (other than the payment of Rent or other amounts) within ten (10) days after written notice by the Port describing the nature of the Default. If the Default is of such a nature that it cannot be completely remedied within the ten (10)-day period, this provision shall be complied with if Lessee begins correction of the Default within the ten (10)-day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical and to the satisfaction of the Port.

### **10.1.4 No Notice Required**

Notwithstanding the foregoing Sections 10.1.2 or 10.1.3, the Port need not give notice for a Default of the same Lease provision more than three (3) times during the Lease Term, and a failure to perform such type of obligation after the third notice constitutes an immediate Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any Event of Default threatens to cause serious harm to the Port or other Port tenants or persons, then the Port shall not be required to give any notice or opportunity to cure, and the Port shall be entitled to immediate injunctive relief.

### **10.1.5 Insolvency**

To the extent permitted by the United States Bankruptcy Code, each of the following shall be considered an Event of Default: (i) insolvency of Lessee; (ii) an assignment by Lessee for the benefit of creditors; (iii) the filing by Lessee of a voluntary petition in bankruptcy; (iv) an adjudication that Lessee is bankrupt or the appointment of a receiver for the properties of Lessee and the receiver is not discharged within ten (10) days; (v) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; or (vi) the attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days. In all of these instances, no notice that an Event of Default has occurred shall be required from the Port, and no cure period except as specifically stated in this Section shall apply.

### **10.1.6 Abandonment**

Failure of Lessee for thirty (30) or more continuous days to use and occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease. In the case of Abandonment, no notice that an Event of Default has occurred shall be required from the Port.

### **10.1.7 Failure to Abide by Laws**

Failure of Lessee to comply with any applicable state, federal, and local laws or any of the Port's Rules. If the Port determines, in its sole discretion, that the Default is not of a serious nature and the Default can be cured as outlined in Section 10.1.3 above, then the Port shall give Lessee ten (10) days' notice of such Default, and Lessee shall be permitted to cure. If the Port determines, in its sole discretion, that the violation is of a serious nature, then termination will be immediate and no opportunity to cure the Default will be allowed.

## **10.2 Remedies on Default**

Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, the Port may exercise any or all of the following remedies, in addition to any other rights and remedies provided elsewhere in this Lease or otherwise at law or in equity:

### **10.2.1 Re-entry**

Without accepting surrender, the Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution, or damages therefor and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold, and enjoy the Premises.

### **10.2.2 Rent Recovery**

Whether or not the Port retakes possession or relets the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the Default. Damages shall include, without limitation: (i) all Rents otherwise owed under this Lease (subject only to Oregon laws concerning mitigation of damages); (ii) all legal expenses and other related costs incurred by the Port as a result of Lessee's Default; (iii) that portion of any leasing commission paid by the Port as a result of this Lease which can be attributed to the unexpired portion of this Lease; (iv) all costs incurred by the Port in restoring the Premises to good order and condition or in remodeling, renovating or otherwise preparing the Premises for reletting; and (v) all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the Default.

### **10.2.3 Recovery of Damages**

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may, in one action, recover accrued damages, plus damages attributable to the remaining Lease Term, including, but not limited to, all Rent due and payment for damages to the Premises. Escalations in Rent shall be calculated as set forth in Section 3 just as if the Lease were to remain in effect. If the Port has relet all or any part of the Premises for all or any part of the period remaining on the Lease Term, this amount will be credited to Lessee, less all expenses incurred in reletting.

## **10.3 Termination of Lease**

The Port may terminate this Lease upon the occurrence of an uncured Event of Default by giving Lessee written notice that this Lease is terminated. However, even if Lessee breaches this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for Default and may be included in a notice of failure of compliance. No such termination shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

#### **10.4 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **10.5 Port Curing of Lessee's Defaults**

If Lessee shall Default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such Default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency and in any other cases only if such Default continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the Default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as additional Rent, any reasonable amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee.

#### **10.6 Default by Port**

In the event of any Default by the Port, Lessee's exclusive remedy shall be an action for damages but not for consequential or punitive damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such Default with particularity, and the Port shall have thirty (30) days within which to cure any such Default, or if such Default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such Default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Premises and not thereafter, subject to Section 11.2 below.

### **11. ASSIGNMENT, SUBLEASE, MORTGAGE, AND TRANSFER**

#### **11.1 General Prohibition**

This Lease is personal to Lessee. Therefore, no part of the Premises nor any interest in this Lease may be assigned, pledged, transferred, mortgaged, or subleased by Lessee nor may a right-of-use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means. Any attempted assignment or sublease by Lessee shall be void and shall be an immediate Event of Default.

#### **11.2 Transfer by the Port**

At any time after the Commencement Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, Lessee shall attorn to the Port's transferee and recognize the transferee as the new Lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer, so long as the transferee has agreed with the Port to assume all obligations of the Port under this Lease.

### **11.3 Estoppel Certificates**

Lessee agrees to execute and deliver to the Port, at any time and within thirty (30) days after written request, a statement certifying, among other things: (i) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (ii) the dates to which Rent has been paid; (iii) whether or not the Port is in Default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such Default; and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a Default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this Section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within thirty (30) days after the Port's written request therefor, Lessee shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement, and the Port shall be deemed to be appointed as Lessee's attorney in fact with full authority to make such an estoppel certificate on Lessee's behalf.

## **12. GENERAL PROVISIONS**

### **12.1 Covenants, Conditions, and Restrictions**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon the Premises and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port.

### **12.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

### **12.3 Port and Lessee**

References to the Port and to Lessee herein are intended to include the commissioners, directors, officers, employees, and agents of both when acting in the course and scope of their employment or as an agent thereof.

### **12.4 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and, as such, are the only parties entitled to enforce its terms. Unless specifically provided otherwise in this Lease, nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

### **12.5 Port Consent**

If Lessee requests the Port's consent or approval pursuant to any provision of this Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent or if the Port may not unreasonably withhold its consent, as a matter of law, and the Port has, in fact, acted unreasonably in either of those instances.

### **12.6 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in, or authorized is appropriate, suitable, practical, safe, or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

### **12.7 Notices**

All notices required under this Lease shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

If by mail to Lessee:

Benson Industries, Inc.  
1650 NW Naito Parkway, Suite 250  
Portland, Oregon, 97209  
Attn: Peter Potwin

If by mail to the Port:

The Port of Portland  
Property & Development Services  
P.O. Box 3529  
Portland OR 97208  
Attn: Contracts Administrator

With a copy to:

The Port of Portland  
P.O. Box 3529  
Portland, OR 97208  
Attn: Legal Department

If by hand delivery to Lessee:

Benson Industries, Inc.  
1650 NW Naito Parkway, Suite 250  
Portland, Oregon, 97209  
Attn: Peter Potwin

If by hand delivery to the Port:

The Port of Portland  
Property & Development Services  
121 NW Everett  
Portland, OR 97209  
Attn: Contracts Administrator

With a copy to:

The Port of Portland  
121 NW Everett  
Portland, OR 97208  
Attn: Legal Department

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision. In order for notice to be deemed effectively given by mail, notice must be sent to both Port addresses listed above.

#### **12.8 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

### **12.9 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision of this Lease.

### **12.10 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by its terms is to survive the termination of this Lease shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

### **12.11 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

### **12.12 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

### **12.13 Lease Subject to Bonds and Ordinances**

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises herein. Lessee agrees that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said land and the Port's interest in the leasehold and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith.

### **12.14 Lease and Public Contract Laws**

To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein and shall control in the event of conflict with any provision of this Lease.

### **12.15 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act or omission of a third party, including other tenants. The Port shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. The Port shall not be liable for the consequence of admitting by passkey or refusing to admit to the Premises Lessee or any of Lessee's agents or employees or other persons claiming the right of admittance.

### **12.16 Calculation of Time**

All periods of time referred to in this Lease shall include Saturdays, Sundays, and legal holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday,

then the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government.

#### **12.17 Headings**

The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

#### **12.18 Exhibits Incorporated by Reference**

All exhibits attached to this Lease are incorporated by reference herein for all purposes.

#### **12.19 Modification**

This Lease may not be modified except by a writing signed by the parties hereto.

#### **12.20 No Brokers**

Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the other in connection with this Lease.

#### **12.21 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any administrative proceeding or any proceeding under the U.S. Bankruptcy Code including, but not limited to, any proceeding involving assumption or rejection of this Lease) is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover reasonable attorney fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. The prevailing party shall also be entitled to recover its attorney fees and costs if it is required to seek legal assistance to enforce any term of this Lease, whether or not a proceeding is initiated. Payment of all such fees and costs shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

#### **12.22 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in this Lease. No claim for liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, any claimed breach of any representations or promises not expressly set forth in this Lease. All oral agreements with the Port are expressly waived by Lessee.

#### **12.23 Successors**

The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, and, so far as the terms of this Lease permit, successors and assigns of the parties



hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto. As used in this Lease, the term "Port" shall encompass all officers, directors, commissioners, employees, and agents of the Port when acting on behalf of the Port.

#### 12.24 Joint and Several Obligations

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

#### 12.25 Execution of Multiple Counterparts

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

#### 12.26 Defined Terms

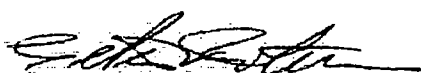
Capitalized terms shall have the meanings given them in the text of this Lease.

#### 12.27 No Limit on Port's Powers


Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

BENSON INDUSTRIES, INC.

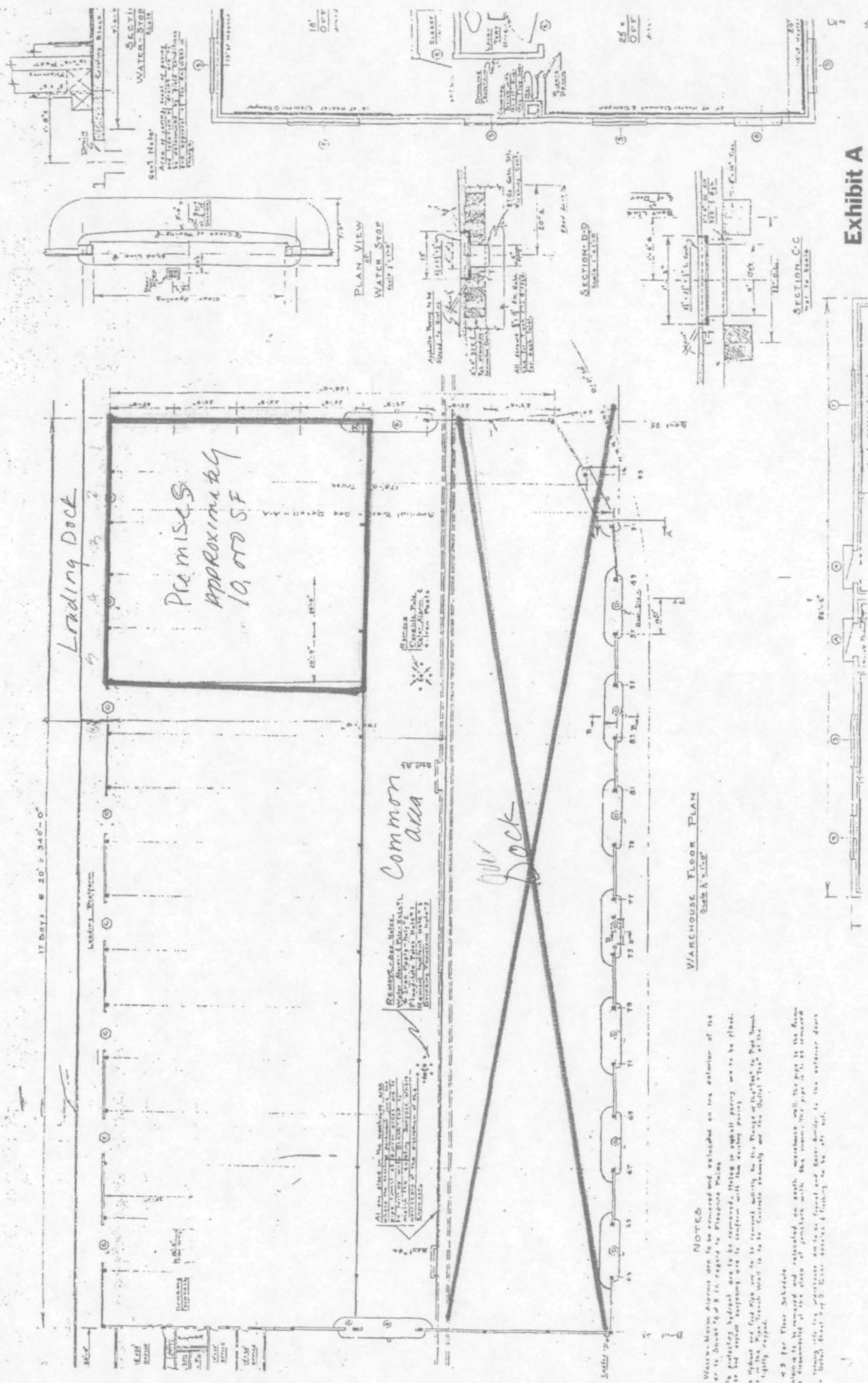
By:   
Title: Measureur

THE PORT OF PORTLAND

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By:   
Counsel for the Port of Portland



## Exhibit A

[illegible]



